



Town of Windham, Maine

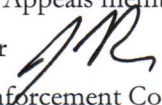
Code Enforcement Department
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Memorandum

DATE: 12/06/2022

TO: Chuck Fleck, Chairperson, and the Board of Appeals members

FROM: Jonathan Rioux, Code Enforcement Director 

CC: Mabel J. Darby-Morey, Zoning and Code Enforcement Coordinator

RE: Public Hearing # 22-002: Green Lantern Solar LLC are applying to extend the validity of a previously granted variance (Public Hearing # 21-006) from Chapter 120, Land Use Ordinance, Article 4 Zoning Districts, Commercial District II (C-2)/ Limited Density Residential (RL) dimensional standard requirement of 150ft of public street frontage, due to landlocked parcel, at 16 Tesla Drive (formerly 994 Roosevelt Trail)- Map 21 Lot 3 (C-2/RL) to create access, solar array, and related infrastructure.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

At the Board of Appeals public hearing #21-006, held on November 4th, 2021, the Board voted 4 to 0 to grant a variance from dimensional standards under Section 120-1106 (D) the Town of Windham Land Use Ordinance from 150 feet of public street frontage to 0 feet of public frontage, subject to the following conditions:

- 1) Further review is required by the Planning Board for future use of this property, and
- 2) Per Section 120-1106 (6), (a) & (b) of Town of Windham Land Use Ordinance any right secured by this approval shall expire if the work or change involved has not begun within six months of the date on which the appeal was granted, or if the work is not substantially completed within one year from the date the appeal was granted.

Issue:

The certificate of zoning variance approval issued on November 29th, 2021, to TMC Holdings LLC for Map 21 Lot 3 includes the sunset provision: “any right secured by this approval shall expire if the work or change involved has not begun within six months of the date on which the appeal was granted, or if the work is not substantially completed within one year from the date the appeal was granted”.

The Sunset provision does not allow enough time for the applicant to receive all necessary State approvals to start work within the six months, or substantially complete work within one year from the date the appeal was granted for each of the uses permitted in the C-2/RL Districts.

Since the approval of the variance, the applicant has been held up by a State- wide cluster study by Central Maine Power, which is due in April of 2023.

If the applicant started work within six months, or substantially completed work within one year from the date the appeal was granted they would circumvent the State (utility) approval process. In addition, the Town of Windham planning board approval process gives a different timeline to commence and complete work.

Background & existing conditions of the property:

On April 25, 2022, the planning board approved site plan and conditional use application #22-01, to develop a 3MW commercial-scale solar facility as a Public Utility Facility located Tax Map: 21; Lot 3. Zoning Districts: Commercial II (C-2) and Light-Density Residential (RL). Section 120-814A of the Land Use Ordinance requires that construction of the improvements covered by any site plan approval shall be substantially commenced within two (2) years of the date upon which the approval is granted and completed within two (2) years of the date upon which the performance guarantee is accepted, in accordance with Section 815(C)(1)(b) of the Land Use Ordinance.

These are the relevant “sunset provision” sections that applies to all variances.

Section 120-1106 (6), (a) & (b):

Sunset provision. The right of any variance from the terms of this chapter granted by the Board of Appeals shall expire if the work or change permitted under the variance is not:

- (a) Begun within six months of the date of the Board's vote; or
- (b) Substantially completed within one year of the date of the Board's vote.

Recommendation:

The Planning Department has no objection to the requested relief, and as per Section 120-814C a performance guarantee will remain in force until the Planning Department or designee certifies the completion of all the required improvements.

Staff recommends that the Board of Appeals reaffirms the granting of the variance with all previously approved conditions and provide that future extensions will not be required until the expiration of approval for application #22-01, if granted by the Planning Board. If application #22-01 is denied by the Planning Board, condition #1 will have failed to be met.

Note: This does not preclude the Town from bringing forward a text amendment to modify or eliminate the ordinance in the future should a problem arise.

Draft Motion:

- To reaffirm the granting of the variance with all previously approved conditions. Further extensions will not be required until the expiration of any Planning Board approval issued for application #22-01. If application #22-01 is denied by the Planning Board, condition #1 will have failed to be met.

Attachments:

Abutter list and Map
Findings of Fact and Conclusion of Law
Certificate of Zoning Variance Approval
Planning Board Approval Letter